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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/566,974

**Applicant(s)**

MCGILL, SHANE ROBERT

**Examiner**

Andrew Janca

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25-58 and 74-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-58 and 74-81 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 25-58 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 42 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 42 recites "the side walls of the opening which constitute a sleeve for said shaft portion". There is insufficient antecedent basis for this limitation in the claim.

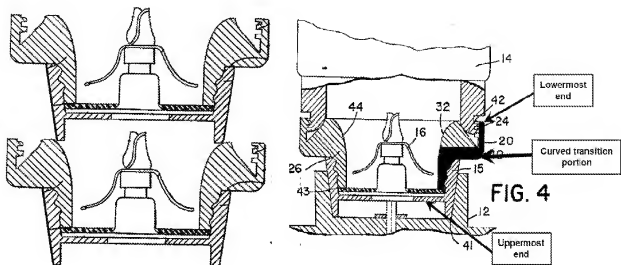
### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 25-28, 31-34, 38-40, 43-44, 49-52, 55-58, 74-75, and 77-78 are rejected under 35 USC 102(b) as anticipated by US 4,889,248 to Bennett.



7. With regard to independent claim 25, Bennett teaches a blending apparatus for a high speed blending operation comprising a container base 14 and a container lid 10-15, the container lid having mounted thereon blending means 16 arranged for a high speed rotation, the blending means extending through the lid and having, at one end, means 12 for connection to a drive motor external to the container and, at the other end, a blending element 16 for blending contents of the container when the drive means is operated, the blending means comprising an unnumbered shaft portion, visible in figure 2, locatable through an opening in the lid and incorporating the connection means at its other end inside case 12 where it connects to the motor, and a blending element portion 16 associated with the shaft portion for rotation therewith, the container lid comprising a rim portion 22-30 defining a circumferential slot 22-30 having a radially inner side and a radially outer side and into which the top edge of the container 14 is located when the lid and container are assembled together, the radially inner side of the slot extending along an inner wall of the container and in contact with or closely adjacent the inner wall when the lid and container are assembled together, and an outwardly convex portion 15 is formed on the lid within the rim portion, the convex portion including the opening through which the blending means is located, the blending element includes blades 16, one of (the two upward pointing blades in figure 2, the two lower pointing blades in figure 2) arranged for operation and positioned entirely within the outwardly convex portion of the lid (figures 1-4).

8. With regard to independent claim 49, Bennett teaches a container lid 10-15 for mounting on an open ended beverage container, the container lid having located thereon blending means 16 arranged for a high speed rotation, the blending means extending through an opening in the lid and having, at one end, means 12 for connection to a drive motor external to the container and, at the other end, a blending element 16 for high speed blending of contents of the container when the drive means is operated, the container lid comprising a rim portion 22-30 defining a circumferential slot 22-30 into which the top edge of a container 14 may be located when the lid and container are assembled together, the lid includes an outwardly convex portion 15 formed within the rim portion, the convex portion including the opening through which the blending means extends, the blending element includes blades 16, one of (the two upward pointing blades in figure 2, the two lower pointing blades in figure 2) arranged for operation and positioned entirely within the outwardly convex portion of the lid (figures 1-4).

9. The additional elements of claims 26 and 50, including that the outwardly convex portion 15 is of curvilinear dome shape and the blending means 16 is located centrally thereof, are taught by Bennett: the outwardly convex portion is domelike in shape, and includes internal curvilinear surfaces (figures 1-4).

10. The additional elements of claims 27 and 51, including that the outwardly convex portion 15 lies substantially level with the upper end of the container, when the lid is assembled on the open end of the container, are taught by Bennett: the outwardly convex portion has a flat inner top (figure 4).

11. The additional elements of claims 28 and 52, including that the outwardly convex portion 15 projects above the upper edge of the container, when the lid is assembled on the open end of the container, are taught by Bennett (figure 4).

12. The additional elements of claim 31, including that container lids assembled with the blending means are arranged to be nestable or stackable with other container lids, when not assembled with the container bases, one container lid being located inside another, are taught by Bennett: the lids may be stacked (see annotated figure 4).

13. The additional elements of claim 32, including that the slot is defined by an outer portion 20 arranged to extend around the top edge of the container, and an inner portion 32 arranged to extend into the container in contact with or closely adjacent the inner wall of the container 14, are taught by Bennett (figure 4).

14. The additional elements of claim 33, including that a curvilinear joint 24-26 is provided between the inner and outer portions of the slot, are taught by Bennett (figure 4).

15. The additional elements of claim 34, including that the inner portion 32 extends between two and twelve times the (horizontal) distance of the outer portion 20, are taught by Bennett (figure 4).

16. Claims 38 and 40 are product-by-process claims. The blending element portion 16 may be assembled with the shaft portion after the shaft is located in the opening, if desired; and the blending means may be assembled onto the lid by first inserting the shaft portion through one end of the lid opening, and then the blending element portion is locked onto the shaft portion at the opposite end of the shaft, if desired (figures 2, 4). It has been held that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. See *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

17. The additional elements of claim 39, including that the blending element portion includes an opening through which the shaft portion is located to lock into said opening, are taught by Bennett: the shaft visibly protruding from base 12 in figure 2 locks into a corresponding opening in the blending element 16 (figure 4).

18. The additional elements of claims 43 and 56, including that the container lid 10-15 includes a product access opening 28 with closure means 15, the access opening being capable of accessing the contents of the container after blending, are taught by Bennett: after blending, element 15 may be unscrewed from the remaining portion 10 of the lid to access the container's contents, if desired (figures 2-4). It has been held that

apparatus claims must be structurally distinguishable from the prior art in terms of structure, not function. See *In re Danley*, 120 USPQ 528, 531 (CCPA 1959); and *Hewlett-Packard Co. v. Bausch and Lomb, Inc.*, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

19. The additional elements of claims 44 and 57, including that the access opening 28 is in the form of a radial opening, are taught by Bennett: access opening 28 is radially symmetric (figure 3).

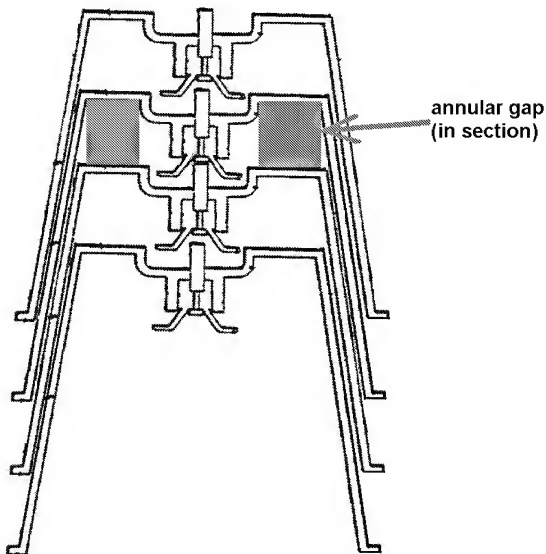
20. The additional elements of claim 55, including that the lid 10-15 defines an internal region in which the blending means 16 operates, said region having curved surfaces, are taught by Bennett (figures 2-4).

21. The additional elements of claim 58, including that the rim 20-32 includes slits 18 extending in a generally axial direction, are taught by Bennett (figure 3).

22. The additional elements of claims 74 and 77, including that the slot 20-32 has a radially inner side 32 and a radially outer side 20, the radially inner side extending between two and twelve times the depth of the radially outer side, the radially inner side of the slot extending along an inner wall of the container 14 and in contact with or closely adjacent the inner wall when the lid and container are assembled together, the radially inner side having a lower end which is connected to the outwardly convex portion 15 by a transition portion 22 defining a lowermost end of the lid, and the lid has an uppermost surface (the unnumbered flat base of 15) and the blades 16 (the downward-pointing pair) of said blending element 16 are confined between said uppermost surface and said lowermost end of the lid, are taught by Bennett (figure 4, annotated).

23. The additional elements of claims 75 and 78, including that the lid has an upper surface (the unnumbered flat base of 15), and the blades 16 (the upper pair of blades) are configured to rest against or adjacent the upper surface of a lid of the same kind and configuration when two or more of said lids assembled with their respective blending means are stacked one on top of another, are taught by Bennett (figure 4, annotated).

24. Claims 80 and 81 are rejected under 35 USC 102(b) as anticipated by US 2002/0127307 A1 by McGill.



25. With regard to claim 80, McGill teaches a container lid 3 which may be mounted on an open ended beverage container, the container lid having located thereon blending means 1 arranged for high speed rotation, the blending means extending through an opening in the lid and having, at one end, means 8 for connection to a drive motor external to the container and, at the other end, a blending element 1B for high speed blending of contents of the container when the drive means is operated, the lid includes



an upper portion above wall 3A having an annular gap, the lid further including an annular lower portion on the outside side of wall 3A which may be located in the annular gap of a lid of the same kind and configuration when two or more of said lids assembled with their respective blending means are stacked one on top of another (figure 4: see above). Apparatus 3 may be used as a container lid. It has been held that it is well settled that the recitation of a new intended use, for an old product, does not make a claim to that old product patentable. See *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

26. With regard to claim 81, McGill teaches a container lid 3 which may be mounted on an open ended beverage container, the container lid having located thereon blending means 1 arranged for high speed rotation, the blending means extending through an opening in the lid and having, at one end, means 8 for connection to a drive motor external to the container and, at the other end, a blending element 1B for high speed blending of contents of the container when the drive means is operated, the lid has an upper surface 3A and the blending element has blades 1B configured to rest against or adjacent said upper surface of a lid of the same kind and configuration, when two or more of said lids assembled with their respective blending means are stacked one on top of another (figure 4: see above).

### ***Claim Rejections - 35 USC § 103***

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claims 25, 27-28, 31-36, 38-41, 43-46, 48-49, 51-52, 55-58, 74-75, and 77-78 are rejected under 35 U.S.C. 103(a) as being obvious over US 2002/0127307 A1 by McGill in view of US 6,071,006 to Hochstein et al and US 4,889,248 to Bennett.

29. With regard to independent claim 25, McGill teaches a blending apparatus comprising a container base 7, an open ended container for high speed blending and suitable for blending beverages 3, and a container lid 2 having blending means mounted thereon and extending through the lid, shaft 8 and impeller 1, with means to connect to an external drive motor through aperture 4E on one end, and a blending element at the other end including blades arranged for high speed rotation and operation (figure 1); a rim with a circumferential slot for fitting of the lid 2 onto the open end of the container 3, into which the top end 3C of the container 3 is located when lid and container are assembled (figures 1-3); where an outwardly convex portion 4 is formed on the lid within the rim portion (figures 1 and 2), which includes an access opening as discussed relative to claims 43, 44, 56, and 57 below and an opening through which the blending means extends. McGill does not teach that a radially inner side of the slot should extend along an inner wall of the container and be in contact with or closely adjacent to the inner wall when the lid and container are assembled, nor that the blending element be positioned entirely within the outwardly convex portion of the lid. However, Hochstein et al teach a blending apparatus for a high speed blending operation comprising a container base 12 and a container lid 20, the container lid having mounted thereon blending means 26-38 arranged for a high speed rotation, the blending means extending through the lid and having, at one end, means 30 for connection to a drive motor external to the container and, at the other end, a blending element 38 for blending contents of the container when the drive means is operated, the blending means comprising a shaft portion 26 locatable through an opening in the lid and incorporating the connection means, and a blending element portion 38 associated with the shaft portion for rotation therewith, the container lid comprising a rim portion 22 defining a circumferential slot into which the top edge 18 of the container is located when the lid and container are assembled, a radially inner side of the slot extending along an inner wall of the container and in contact with or closely adjacent the inner wall when the lid and container are assembled, and wherein an outwardly convex portion 34-36 is formed on the lid within the rim portion, the convex portion including the opening into which the blending means is located (figures 1 and 2). It would have been obvious

to one of ordinary skill in the art to provide the slot of McGill with the inner portion of Hochstein et al: the motivation would have been to better seal or hermetically seal the cover to the container (Hochstein et al 2:28-29). Further, Bennett teaches a blending apparatus for a high speed blending operation comprising a container base 14 and a container lid 10-15, the container lid having mounted thereon blending means 16 arranged for a high speed rotation, the blending means extending through the lid and having, at one end, means 12 for connection to a drive motor external to the container and, at the other end, a blending element 16 for blending contents of the container when the drive means is operated, the blending means comprising an unnumbered shaft portion, visible in figure 2, locatable through an opening in the lid and incorporating the connection means at its other end inside case 12 where it connects to the motor, and a blending element portion 16 associated with the shaft portion for rotation therewith, the container lid comprising a rim portion 22-30 defining a circumferential slot 22-30 having a radially inner side and a radially outer side and into which the top edge of the container 14 is located when the lid and container are assembled together, the radially inner side of the slot extending along an inner wall of the container and in contact with or closely adjacent the inner wall when the lid and container are assembled together, and an outwardly convex portion 15 is formed on the lid within the rim portion, the convex portion including the opening through which the blending means is located, the blending element includes blades 16, one of (the two upward pointing blades in figure 2, the two lower pointing blades in figure 2) arranged for operation and positioned entirely within the outwardly convex portion of the lid (figures 1-4). It would have been obvious to position the blending element of McGill entirely within an outwardly convex portion, as does Bennett: the motivation would have been to enclose an unencumbered internal space for the motion of the cutting blades and the free convective motion of the container's contents around them (Bennett 4:20-27).

30. With regard to independent claim 49, McGill teaches a container lid 2 capable of being mounted on an open ended beverage container, having blending means mounted thereon and extending through the lid, shaft 8 and impeller 1, with means to connect to an external drive motor through aperture 4E on one end, and a blending element at the

other end including blades arranged for high speed rotation and operation (figure 1); a rim with a circumferential slot for fitting of the lid 2 onto the open end of the container 3, into which the top end 3C of the container 3 is located when lid and container are assembled (figures 1-3); where an outwardly convex portion 4 is formed on the lid within the rim portion (figures 1 and 2), which includes an access opening as discussed relative to claims 43, 44, 56, and 57 below and an opening through which the blending means extends. McGill does not teach that a radially inner side of the slot should extend along an inner wall of the container and be in contact with or closely adjacent to the inner wall when the lid and container are assembled, nor that the blending element be positioned entirely within the outwardly convex portion of the lid. However, Hochstein et al teach a blending apparatus for a high speed blending operation comprising a container base 12 and a container lid 20, the container lid having mounted thereon blending means 26-38 arranged for a high speed rotation, the blending means extending through the lid and having, at one end, means 30 for connection to a drive motor external to the container and, at the other end, a blending element 38 for blending contents of the container when the drive means is operated, the blending means comprising a shaft portion 26 locatable through an opening in the lid and incorporating the connection means, and a blending element portion 38 associated with the shaft portion for rotation therewith, the container lid comprising a rim portion 22 defining a circumferential slot into which the top edge 18 of the container is located when the lid and container are assembled, a radially inner side of the slot extending along an inner wall of the container and in contact with or closely adjacent the inner wall when the lid and container are assembled, and wherein an outwardly convex portion 34-36 is formed on the lid within the rim portion, the convex portion including the opening into which the blending means is located (figures 1 and 2). It would have been obvious to one of ordinary skill in the art to provide the slot of McGill with the inner portion of Hochstein et al: the motivation would have been to better seal or hermetically seal the cover to the container (Hochstein et al 2:28-29). Further, Bennett teaches a blending apparatus for a high speed blending operation comprising a container base 14 and a container lid 10-15, the container lid having mounted thereon blending means 16 arranged for a high

speed rotation, the blending means extending through the lid and having, at one end, means 12 for connection to a drive motor external to the container and, at the other end, a blending element 16 for blending contents of the container when the drive means is operated, the blending means comprising an unnumbered shaft portion, visible in figure 2, locatable through an opening in the lid and incorporating the connection means at its other end inside case 12 where it connects to the motor, and a blending element portion 16 associated with the shaft portion for rotation therewith, the container lid comprising a rim portion 22-30 defining a circumferential slot 22-30 having a radially inner side and a radially outer side and into which the top edge of the container 14 is located when the lid and container are assembled together, the radially inner side of the slot extending along an inner wall of the container and in contact with or closely adjacent the inner wall when the lid and container are assembled together, and an outwardly convex portion 15 is formed on the lid within the rim portion, the convex portion including the opening through which the blending means is located, the blending element includes blades 16, one of (the two upward pointing blades in figure 2, the two lower pointing blades in figure 2) arranged for operation and positioned entirely within the outwardly convex portion of the lid (figures 1-4). It would have been obvious to position the blending element of McGill entirely within an outwardly convex portion, as does Bennett: the motivation would have been to enclose an unencumbered internal space for the motion of the cutting blades and the free convective motion of the container's contents around them (Bennett 4:20-27).

31. With regard to claims 27-28 and 51-52, McGill teaches an outwardly convex portion projecting above the upper end of the container as defined by the plane of the container's rim; and parallel to the same plane defined by the container's upper end, and hence level with it.

32. The additional elements of claim 31, including that container lids assembled with the blending means are arranged to be nestable or stackable with other container lids, when not assembled with the container bases, one container lid being located inside another, are taught by Bennett: the lids may be stacked (see annotated figure 4).

33. The additional elements of claim 32, including that the slot is defined by an outer portion 20 arranged to extend around the top edge of the container, and an inner portion 32 arranged to extend into the container in contact with or closely adjacent the inner wall of the container 14, are taught by Bennett (figure 4).

34. The additional elements of claim 33, including that a curvilinear joint 24-26 is provided between the inner and outer portions of the slot, are taught by Bennett (figure 4).

35. The additional elements of claim 34, including that the inner portion 32 extends between two and twelve times the (horizontal) distance of the outer portion 20, are taught by Bennett (figure 4).

36. With regard to claims 35 and 36, McGill teaches a support 46 for an assembled container and lid (figures 11-14, P87ff) having a clamping member 50, moveable to engage the end of the container and locate the assembly during operation, with a clamping surface (the undersurface and unlabelled tip of 50) engageable with and extending beyond the side edges of the container (figure 14), reciprocally movable and capable of applying a predetermined force to a container by a piston and cylinder device (P95), and having switch means for detecting an obstruction to a clamping action (P96). This support device is presented for in the context of an alternate embodiment of his invention where the blending means are disposed in the base of the blending container which has a separate lid. However, since it is clearly capable of performing the same functions with the upside-down containers of his first embodiment which have their blending members in their lids as with the right-side-up containers of his second embodiment with separate lids and blending elements, it would have been obvious to one of ordinary skill in the art to use the same support device with the blending containers of the first type. The motivation would have been to charge the container with product (P87).

37. Claims 38 and 40 are product-by-process claims. McGill describes blending means similar to those of his first embodiment (figures 1-4), comprised of a blending element portion 35 which is arranged with the shaft portion 8, by inserting first one through the hole in the base and then locking the shaft into the blending element (P100-

P107). The pieces are clearly capable of being joined in the opposite order, inserting first the shaft through the hole, then snapping the blending element on to it (figures 15-18). since the overall structure of the blending element, the shaft onto which it fits, and the hole through which it protrudes are substantially the same and perform the same function as the blending elements locatable in the lid in the first embodiment of McGill treated earlier, it would have been obvious to one of ordinary skill in the art to adopt the same details in manufacturing the blending assemblies meant to penetrate the lid of the container rather than its base. The motivation would have been to assemble a stirring element protruding through the lid of the container, rather than its base. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. See *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

38. With regard to claims 39 and 41, the blending element portion includes an opening 65 into which the shaft portion is locked and secured into place by shoulder means 62 (P106) and 66 (P103) (figures 16-18).

39. With regard to claims 43-44 and 56-57, McGill teaches a product access opening with closure means through which the contents of the container may be accessed after blending (straw 5 in figure 1 and P45; or alternatively, opening 12 and cover 16 in figure 3), radially disposed upon the lid from its center (figures 1 and 3).

40. With regard to claims 45, 46, and 48, McGill teaches a container lid with a hole 12 and pocket 13 for holding product to be mixed with material in the container for blending material to be mixed with the product in the main body of the container; in particular, the material may be gas for carbonation (P50, figure 3).

41. The additional elements of claim 55, including that the lid 10-15 defines an internal region in which the blending means 16 operates, said region having curved surfaces, are taught by Bennett (figures 2-4).

42. The additional elements of claim 58, including that the rim 20-32 includes slits 18 extending in a generally axial direction, are taught by Bennett (figure 3).

43. The additional elements of claims 74 and 77, including that the slot 20-32 has a radially inner side 32 and a radially outer side 20, the radially inner side extending between two and twelve times the depth of the radially outer side, the radially inner side of the slot extending along an inner wall of the container 14 and in contact with or closely adjacent the inner wall when the lid and container are assembled together, the radially inner side having a lower end which is connected to the outwardly convex portion 15 by a transition portion 22 defining a lowermost end of the lid, and the lid has an uppermost surface (the unnumbered flat base of 15) and the blades 16 (the downward-pointing pair) of said blending element 16 are confined between said uppermost surface and said lowermost end of the lid, are taught by Bennett (figure 4, annotated).

44. The additional elements of claims 75 and 78, including that the lid has an upper surface (the unnumbered flat base of 15), and the blades 16 (the upper pair of blades) are configured to rest against or adjacent the upper surface of a lid of the same kind and configuration when two or more of said lids assembled with their respective blending means are stacked one on top of another, are taught by Bennett (figure 4, annotated).

45. Claims 26, 29-30, 42, 50, and 53-54 are rejected under 35 U.S.C. 103(a) as being obvious over US 2002/0127307 A1 by McGill in view of US 6,071,006 to Hochstein et al and US 4,889,248 to Bennett as applied to claims 25 and 49 above, and further in view of US 6,736,538 B2 to Bittner.

46. With regard to claims 26, 29-30, 50, and 53-54, McGill, Hochstein, and Bennett teach that the lid may be outwardly convex; but not that it may be semi-spherical or part-semi-spherical, nor that it may be transparent. However, Bittner teaches a blending apparatus for a high speed blending operation comprising a container base 20 and a container lid 30, the container lid having mounted therethrough blending means 2-10 arranged for a high speed rotation, the blending means extending through the lid



and having, at one end, means for connection to a drive motor external to the container and, at the other end, a blending element 10 for blending contents of the container when the drive means is operated, the blending means comprising a shaft 2 locatable through an opening in the lid and incorporating the connection means at its other end, and a blending element portion 10 associated with the shaft portion for rotation therewith, and an outwardly convex portion 30 is formed on the lid within the rim portion, the convex portion including the opening through which the blending means is located, the blending element includes blades 12-14 which may be arranged for operation and positioned entirely within the outwardly convex portion of the lid (figures 1, 3B): and further teaches that the outwardly convex portion may be semi-spherical, and transparent (figure 3B). It would have been obvious to one of ordinary skill in the art to make the outwardly convex portion of the blending cup of McGill, Hochstein, and Bennett semi-spherical and transparent: the motivation would have been to reduce splatter (Bittner 1:48-50) while allowing the blending operation to nonetheless be monitored when the blending blades are in a topmost orientation (figure 3B).

47. The additional elements of claim 42, including lubrication means 16 which may permit the contents of the container during blending to contact and lubricate the co-operating surfaces of the shaft portion and the opening into the lid, where the lubrication means includes longitudinal slots 16 in the side walls of the opening 16-18 defined by the interior of blending element 10 and which constitute the sleeve 16-18 in which the shaft portion is held, where the slots are capable of admitting the container contents to act as lubrication, are taught by Bittner (figures 1, 2B).

48. Claim 37 is rejected under 35 U.S.C. 103(a) as being obvious over US 2002/0127307 A1 by McGill in view of US 6,071,006 to Hochstein et al and US 4,889,248 to Bennett as applied to claims 35-36 above, and further in view of US 4,108,054 to Klöcker et al. McGill teaches a clamping member, which in an alternate embodiment to the machine press type treated with regard to claims 35 and 36 operates by a clamping member 47, rotatorily connected to fixed support member 46 and moveable to engage the top end of the container and so clamp it in place, and which

may have switch means for detecting an obstruction to a clamping action (P87-P91, P96). McGill does not appear to explicitly disclose that the mechanism for this safety switch might be springs. However, Klöcker et al disclose a safety interlock device for a beverage blending machine, having a clamping member 36, rotatorily connected to fixed support member 1 and moveable to engage the top end of the container 8 and so clamp it in place, and which has safety switch means preventing movement upon an obstruction to clamping action (4:25-33). The pivots to this clamping apparatus and mechanical safety switch operate through springs (4:6-21, figures 1 and 2). McGill and Klöcker et al are analogous art because they come from the same problem-solving area, that of providing safety switches for clamps supporting beverage blenders. At the time the invention was made, it would have been obvious to one of ordinary skill in the art to provide springs such as those of Klöcker et al for the mechanical safety switch mechanism of McGill. The motivation would have been to provide some small resistance to clamping, so that the arm could not clamp shut automatically without human intervention and a good connection.

49. Claim 42 is rejected under 35 U.S.C. 103(a) as unpatentable over US 2002/0127307 A1 by McGill in view of US 6,071,006 to Hochstein et al and US 4,889,248 to Bennett as applied to claim 25 above, and further in view of US 2,068,858 to Dunkelberger and US 3,135,111 to Roe. McGill teaches a blending apparatus and a container lid 2 for mounting on an open ended beverage container 3, the container lid having mounted thereon blending means 1-8 for a high speed blending operation, the blending means including a shaft portion 8 extending through the lid and having, at one end, means for connection to a drive motor external to the container and, at the other end, a blending element 1 for high speed blending of contents of the container when the drive means is operated (figures 1-3). McGill also teaches in an alternate embodiment, where the blending means is mounted through the floor of the blending container, lubrication means to permit the contents of the container, during blending, to contact and lubricate the co-operating surfaces of the shaft portion and the opening in the lid (P107). It would have been obvious to one of ordinary skill in the art to apply the

lubrication means taught by McGill in a second embodiment to the blending means of the first, where the shaft is mounted through the lid of the container: the motivation would have been to lubricate the shaft. McGill does not teach that the container contents may be admitted to act as lubrication, nor that they might enter through longitudinal slots in the side walls of the opening. However, Dunkelberger teaches a liquid blender having blending means 16 mounted through a collar 11, which has holes 13 through which blended liquid may flow in order to lubricate the bearing upon which its shaft turns (1:35-45, first column; figure 1). It would have been obvious to provide liquid ports such as those of Dunkelberger to the sleeve of McGill to allow blended liquids to access the rotating shaft: the motivation would have been to allow the liquids being blended to act as lubricant for the shaft (Dunkelberger 1:35-45, first column). Further, Roe teaches as desirable means for lubricating a spinning shaft comprising longitudinal slots 60 in the sleeves 55 which carry rotating shafts, through which lubricant may flow (figure 3, 5:18-23). It would have been obvious to give the liquid access means of Dunkelberger the slot-like configuration of Roe, such longitudinal channels being adapted to deliver lubricant to a spinning shaft: the motivation would have been to supply lubricating fluid in large quantities, and most efficiently lubricate the moving parts (Roe 3:43-61).

50. Claim 42 is rejected under 35 U.S.C. 103(a) as unpatentable over US 2002/0127307 A1 by McGill in view of US 6,071,006 to Hochstein et al and US 4,889,248 to Bennett as applied to claim 25 above, and further in view of WO 03/002241 A1 by Colding-Kristensen et al. McGill teaches a blending apparatus and a container lid 2 for mounting on an open ended beverage container 3, the container lid having mounted thereon blending means 1-8 for a high speed blending operation, the blending means including a shaft portion 8 extending through the lid and having, at one end, means for connection to a drive motor external to the container and, at the other end, a blending element 1 for high speed blending of contents of the container when the drive means is operated (figures 1-3). McGill also teaches in an alternate embodiment, where the blending means is mounted through the floor of the blending container,

lubrication means to permit the contents of the container, during blending, to contact and lubricate the co-operating surfaces of the shaft portion and the opening in the lid (P107). It would have been obvious to one of ordinary skill in the art to apply the lubrication means taught by McGill in a second embodiment to the blending means of the first, where the shaft is mounted through the lid of the container: the motivation would have been to lubricate the shaft. McGill does not teach that the container contents may be admitted to act as lubrication, nor that they might enter through longitudinal slots in the side walls of the opening. However, Colding-Kristensen et al teach a blending apparatus with rotating blades, the shaft of which has a sleeve 3, which sleeve has longitudinal slots 4 which are capable of admitting the container contents and hence lubricate the shaft (figure 1). It would have been obvious to one of ordinary skill in the art to provide the sleeve with longitudinal slots of Colding-Kristensen et al to the blender of McGill: the motivation would have been to better homogenize the container contents (Colding-Kristensen et al 3:3-24). Note that it has been held that apparatus claims must be structurally distinguishable from the prior art in terms of structure, not function. See *In re Danley*, 120 USPQ 528, 531 (CCPA 1959); and *Hewlett-Packard Co. v. Bausch and Lomb, Inc.*, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

51. Claim 42 is rejected under 35 U.S.C. 103(a) as being as unpatentable over US 2002/0127307 A1 by McGill in view of US 6,071,006 to Hochstein et al and US 4,889,248 to Bennett as applied to claim 25 above, and further in view of US 5,727,742 to Lawson, who teaches a sleeve 20 or alternatively 46 for a blending element 25 or alternatively 60 (figures 1 and 2 respectively) which, similar to that taught by Colding-Kristensen et al, has a longitudinal slot 22 or alternatively 61 which are capable of admitting the container contents and hence lubricate the shaft (figure 1). It would have been obvious to one of ordinary skill in the art to provide the sleeve with longitudinal slots of Lawson to the blender of McGill: the motivation would have been to allow recirculatory mixing of the container contents (Lawson 3:41-45).

52. Claim 47 is rejected under 35 U.S.C. 103(a) as unpatentable over US 2002/0127307 A1 by McGill in view of US 6,071,006 to Hochstein et al and US 4,889,248 to Bennett as applied to claim 46 above, and further in view of US 6,363,837 B1 to Sham et al. McGill teaches a pocket internal to the container for holding an additional product, but does not teach mesh to allow material in the container to enter the pocket. However, Sham et al teach a blending apparatus for high speed blending with a base 108-110, a lid 4-12-52 defining an internal region having curved surfaces in which the blending means operates, blending means 94 comprised of a shaft 96 and a blending element 98, a rim with a circumferential slot 56, and an outwardly convex portion 4 formed on the lid, and including the opening 75 through which the blending means descends, and a radially displaced product access opening, spout 106 (figures 2-5), with closure means (5:46-52). The circumferential slot at which the top end of the container 104 is located is defined by oppositely directed circumferential portions, the first portion, lower rim of part 52 (figure 4), closely adjacent to the inner side wall of container 104, and which in its curvilinear (circumferentially) join with inner portion 56 extends into the container (figure 4); and further provide means 44 and 28 for holding product to be mixed with the material, sliced fruit to be juiced (figure 4), formed as a pocket under dome 4 which may be opened to place the fruit inside, and a mesh or screen (4:11-15) for permitting communication from the material in the container 104 to encounter the fruit in the pocket when the pitcher is tipped (figure 4). McGill, Hochstein et al, Bennett, and Sham et al are analogous art because they are from the same problem-solving area, mixing two kinds of materials within a single blender. It would have been obvious to provide the mesh of Sham et al to the pocket of McGill: the motivation would have been to allow fluids from the pocket to enter the main compartment of the blender (Sham et al 1:54-58).

53. Claim 58 is rejected under 35 U.S.C. 103(a) as unpatentable over US 2002/0127307 A1 by McGill in view of US 6,071,006 to Hochstein et al and US 4,889,248 to Bennett as applied to claim 25 above, and further in view of US 3,085,281 to Massman. Massman and McGill are analogous arts because they are from the same

problem-solving area, providing access lids to portable fluid mixing devices. Massman teaches a container lid 32 having slits extending in a generally radial direction. It would have been obvious to one of ordinary skill in the art, providing a lid to any container which is meant to be opened by a human being such as that of McGill, to provide radial slits such as those of Massman: the motivation would have been to make the lid a cap which could be unscrewed, and allow the fingers to easily grip and unscrew it.

54. Claims 76 and 79 are rejected under 35 USC 103(a) as unpatentable over US 2002/0127307 A1 by McGill in view of US 6,071,006 to Hochstein et al and US 4,889,248 to Bennett as applied to claims 25 and 49 above, and further in view of US 4,811,860 to Sorenson et al. McGill, Bennett, and Hochstein teach blender containers with lids, and McGill and Bennett further teach that the lids may be stackable; but do not teach that the lid includes an upper portion having an annular gap, the lid further including an annular lower portion which is intended to locate in the annular gap of a lid of the same kind and configuration when two or more of said lids assembled with their respective blending means are stacked one on top of another. However, Sorenson teach beverage containers with stackable lids 10, where the lids further include an upper portion having an annular gap, the lid further including an annular lower portion which is intended to locate in the annular gap of a lid of the same kind and configuration when two or more of said lids assembled with their respective blending means are stacked one on top of another (figure 3). McGill, Hochstein, Bennett, and Sorenson are analogous arts, being from the same field of endeavor, the provision of containers for drinkable beverages. It would have been obvious to provide the nesting annular gap of the lid of Sorenson to the lid of McGill, Hochstein, and Bennett: the motivation would have been to allow high-density nested packaging of the lids in bulk (Sorenson 1:12-13, 2:60-63).

### ***Conclusion***

55. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **this action is made final**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Janca whose telephone number is (571) 270-5550. The examiner can normally be reached on M-Th 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on (571) 272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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